

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 11, 2003 at 8:01 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pamela Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp for these minutes appears at the end of the content it refers to.

Committee Business Summary:

Hearing & Date Posted: HB 295, HB347, HB 521 2/04/03
Executive Action: HB 349-Tabled, HB 393-Tabled,
HB 402-Do Pass As Amended,

HB 521-Do Pass As Amended,
HB 489-Do Pass As Amended & Placed
on Consent Calendar
HB 496-Do Pass As Amended & Placed
on Consent Calendar
HB 453-Do Pass

HEARING ON HB 521

Sponsor: REP. JOE BALLYEAT, HD 32, Bozeman, Montana

Opening Statement by Sponsor:

REP. BALLYEAT opened the hearing by saying that this is a bill to revise bail bond laws. This bill will attempt to clear up the confusion about the proper use of bail bonds and also the rules regarding the appearance of the defendant within 90 days.

EXHIBIT(juh30a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 57}

Proponents' Testimony:

Scott Restrent, Valley Bail Bonds, Belgrade, Montana, spoke to the Committee about clearing up the language in the statute 46-9-503. There are many loopholes in the statute that leave this industry vulnerable. He stated that in Section 3 of this statute, the bail bondsman had to provide a "satisfactory" excuse for "John Doe" failing to appear in court. Technically, if the bondsman had to go to somewhere else to pick up the offender, the bondsman may still have to pay the bond because the bondsman was unable to provide a "satisfactory" excuse for not appearing.

This bill will guarantee that their industry has 90 days in full to recover their investment without penalty. HB 521 will also define what a Surety Bond is. A Surety Bond is an appearance bond only, not a post-adjudication performance bond. He stated the judge in some cases, would hold this bond until fines, penalties and restitutions were paid.

Robert Throssell, Montana Magistrates Association, informed the Committee that this will be a clarification of the statute.

Kelly Reisbeck, Montana Bail Agents Association, rose in support of this bill.

Ben Thielen, Montana AAA Bail Bonds, rose in support of this bill.

Alicia Pichette, Montana State Auditor's Office, informed the Committee that this office is the licenser for the bail bondsman. **Ms. Pichette** stated that this office is in support of this bill.

Dave Crow, Valley Bail Bonds, spoke in favor of this bill.

Rich Macel, Big Boy Bail, spoke in favor of this bill.

Earl Rowe, The Bondsman, spoke in favor of this bill.

Paul Jaro, Arrow Bail, spoke in favor of this bill.

Gene Senne, Anderson Bail Bonds, spoke in favor of this bill.

Morey Anderson, Anderson Bail Bonds, spoke in favor of this bill.

Bob Smith, Bob's Bail Bonding, spoke in favor of this bill.

{Tape: 1; Side: A; Approx. Time Counter: 57 - 202}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS inquired of Mr. Throssell about the current language in Section two regarding forfeiture of the bail and the affect of the amended language on this procedure.

{Tape: 1; Side: A; Approx. Time Counter: 202 - 247}

Closing by Sponsor:

REP. BALLYEAT closed the hearing on HB 521 by saying that the intent of this bill is pretty clear but that on Page 2, Lines 5-6 there could be some changes if necessary.

{Tape: 1; Side: A; Approx. Time Counter: 247 - 270}

HEARING ON HB 347

Sponsor: REP. EILEEN CARNEY, HD 82, LIBBY, MONTANA

Opening Statement by Sponsor:

REP. CARNEY opened the hearing on HB 347 by saying that the intent of this bill is that whenever a landlord is threatened by a tenant, the landlord will have the legal recourse to terminate the tenant agreement within three days.

{Tape: 1; Side: A; Approx. Time Counter: 270 - 303}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. STOKER, LANGE, SHOCKLEY and NOENNIG asked REP. CARNEY several questions regarding the current HUD three-day notice law, and how to record the threat with law enforcement.

{Tape: 1; Side: A; Approx. Time Counter: 303 - 398}

Closing by Sponsor:

REP. CARNEY closed the hearing on HB 347.

{Tape: 1; Side: A; Approx. Time Counter: 398 - 407}

HEARING ON HB 295

Sponsor: REP. JOHN PARKER, HD 45, GREAT FALLS, MONTANA

Opening Statement by Sponsor:

REP. PARKER opened the hearing on HB 295 by informing the Committee that he is now the sponsor of this bill as of Friday February 8, 2003. He further stated to the Committee that he will be bringing forth many amendments that will make the current bill obsolete. REP. PARKER stated that this bill will make someone with a BAC test of 0.3 or higher will be charged with an automatic felony.

{Tape: 1; Side: A; Approx. Time Counter: 407 - 500}

Proponents' Testimony:

Kathy McGowan, Montana County Attorneys Association, testified that her organization is in support of this bill.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 70}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. NEWMAN and **SHOCKLEY** asked the sponsor questions regarding Section 1, Page 1, Lines 17-20 that deals with property damage in excess of \$10,000. **CHAIRMAN SHOCKLEY** stated that after the amendments are done, the Committee will take Executive Action at a later date with witnesses being allowed to testify then.

{Tape: 1; Side: B; Approx. Time Counter: 70 - 161}

Closing by Sponsor:

REP. PARKER closed the hearing on HB 295.

{Tape: 1; Side: B; Approx. Time Counter: 161 - 179}

EXECUTIVE ACTION ON HB 521

Motion: **REP. NEWMAN** moved that **HB 521 DO PASS**.

Discussion:

CHAIRMAN SHOCKLEY discussed the amendment that **REP. BALYEAT** wants in HB 521. The amendment would be for Page 2, Line 9, where "exonerated" would be inserted. **REP. NEWMAN** informed the Committee that the word "exonerated" would not be necessary; therefore the amendment would not be necessary. **CHAIRMAN SHOCKLEY** postponed Executive Action on HB 521 until the sponsor could be there.

{Tape: 1; Side: B; Approx. Time Counter: 179 - 228}

EXECUTIVE ACTION HB 496

Motion: REP. GALLUS moved that HB 496 DO PASS.

Motion: REP. PARKER moved that HB 496 BE AMENDED.

Discussion:

John MacMaster, Legislative Staffer, explained the amendment by referring to Page 1, in the underlined language. The wording deals with an "ex-parte" order. REP. GUTSCHE addressed concerns that were made by Judy Wang regarding an out-of-state order and whether it is enforceable in the State of Montana. Mr. MacMaster responded by saying that Ms. Wang's concerns were addressed with this amendment.

REP. NEWMAN, STOKER, CLARK and PARKER discussed the Temporary Restraining Order, how the offender would be notified and by whom, the time frame in the notification and whether a complaint would have the validity needed to evict.

Vote: Motion that HB 496 BE AMENDED carried unanimously. (voice vote)

Motion/Vote: REP. PARKER moved that HB 496 DO PASS AS AMENDED. Motion carried unanimously. (voice vote)

{Tape: 1; Side: B; Approx. Time Counter: 228 - 486}

EXECUTIVE ACTION ON HB 521

Motion: REP. PARKER moved that HB 521 DO PASS.

Discussion:

There was discussion in the Committee regarding the forfeiture of bail and the 90 days. REP. NEWMAN discussed Section 3, line 9, and changing the last word "may" and change to "shall."

Motion: REP. NEWMAN moved that HB 521 BE AMENDED CONCEPTUALLY.

Discussion:

CHAIRMAN SHOCKLEY and **REP. NOENNIG** discussed the language regarding the bail bondsmen or the police officer returning the offender and whether the language should be changed from police officer to detention. **Mr. MacMaster** explained to the Committee that either scenario would work.

Vote: Motion that HB 521 BE AMENDED carried unanimously. (REP. NEWMAN'S CONCEPTUAL MOTION) (voice vote)

Motion: REP. PARKER moved that HB 521 DO PASS AS AMENDED.

Discussion:

There was general discussion by the Committee regarding the restitution issue and whether a bail bond is to secure an appearance of an offender.

Vote: Motion that HB 521 DO PASS AS AMENDED carried 17-1 with REP. PARKER voting no. (voice vote)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 195}

EXECUTIVE ACTION ON HB 402

Motion: REP. PARKER moved that HB 402 DO PASS.

Motion: REP. HARRIS moved that HB 402 BE AMENDED CONCEPTUALLY.

Discussion:

REP. HARRIS stated to the Committee that this conceptual amendment would make this offense a violent offense within the meaning of 46-23-502-9A. **REP. PARKER** explained this amendment with regard to the "violent offender" section of the MCA.

Presently a violent offender must register with the proper authorities and failure to do so can result in a free-standing felony offense that is punishable by a maximum of five years in prison.

There was discussion among the committee members as to how running a "meth" lab and violent offender may be linked together in this proposed statute. The way these two offenses may link is that when a "meth" user is going through withdrawal and is "tweaking," they become extremely violent and the contention is that this violence causes some of the most heinous crimes.

Therefore, without the "meth" labs being there in the first place, the opportunity to start using the drugs, becoming "hooked" and finally withdrawing and "tweaking," the source isn't there for a perpetrator to "tweak" and commit these violent crimes.

REP. GUTSCHE expressed concern that operating a "meth" lab itself is not a violent crime in and of itself. **REP. NOENNIG** expressed similar concerns. **REPS. HARRIS, NEWMAN** and **STOKER** all supported this amendment and related stories and their own opinions regarding the amendment.

REP. EVERETT then inquired that if they are a violent offender, would the offender receive more than the current 40-50 years as pertaining to the violent offender laws now enforced.

REP. CLARK expressed concern about the direction that the law is headed. **REP. PRICE** agreed with **REP. CLARK**. The Committee continued to discuss the pros and cons of this amendment.

Vote: Motion that HB 402 BE AMENDED carried 12-6 with **REPS. CLARK, GALLUS, GUTSCHE, NOENNIG, RICE, and SHOCKLEY** voting no. (voice vote)

Discussion:

REP. PARKER and **REP. NEWMAN** answered questions whether this bill would be acting as a deterrent in the change of 40-50 years sentence and whether the sentence should changed to 100 years.

Questions then were raised about the deterioration of the offender's health and whether they leave and/or stay out of the state due to the lengthening of sentencing.

Motion/Vote: **REP. FACEY** moved that HB 402 DO PASS AS AMENDED. Motion carried unanimously. (voice vote)

{Tape: 2; Side: A; Approx. Time Counter: 195 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 322}

EXECUTIVE ACTION ON HB 489

Motion: **REP. NOENNIG** moved that HB 489 DO PASS.

Motion: **REP. GALLUS** moved that HB 489 BE AMENDED.

Discussion:

REP. GALLUS stated that his amendment would change the effective date to July 1.

Vote: Motion that HB 489 BE AMENDED carried unanimously. (voice vote)

Motion: REP. GALLUS moved that HB 489 DO PASS AS AMENDED.

Vote: Motion that HB 489 DO PASS AS AMENDED carried unanimously. (voice vote)

Motion/Vote: REP. FACEY moved HB 489 BE MOVED TO THE CONSENT CALENDAR. Motion carried unanimously. (voice vote)

Motion/Vote: REP. MALCOLM moved HB 496 BE MOVED TO THE CONSENT CALENDAR. Motion carried unanimously. (voice vote)

{Tape: 2; Side: B; Approx. Time Counter: 322 - 412}

EXECUTIVE ACTION HB 393

REP. NOENNIG gave the Committee a report on the Sub-Committee's actions on the amendment that clarifies this bill. Further, **REP. NOENNIG** and the Sub-Committee recommended to this Committee that this bill not be passed in any form. **REP. GALLUS** concurred with this report.

Motion/Vote: REP. LASZLOFFY moved that HB 393 BE TABLED. Motion carried 10-8 with REPS. EVERETT, MALCOLM, NOENNIG, RICE, SALES, SHOCKLEY, STOKER, and THOMAS voting no. (roll call vote)

{Tape: 2; Side: B; Approx. Time Counter: 412 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 118}

EXECUTIVE ACTION ON HB 349

Motion: REP. GALLUS moved that HB 349 DO PASS.

Discussion:

REPS. NEWMAN, GALLUS, NOENNIG, PARKER and **SHOCKLEY** discussed why this bill was not in the other legislation regarding DUI'S. The Committee then discussed the exigent circumstances, the language of this bill regarding the Supreme Court rulings, probable cause, blood drawing, implied consent and the original intent of the

law. **Mr. MacMaster** explained the bill regarding Pages 1,2 and 3 in reference to the DUI implied consent, Page 4, Lines 19-21 regarding "competent evidence," and "immunity from negligence."

Motion: **REP. GUTSCHE** moved that **HB 349 BE TABLED.**

Discussion:

REP. NEWMAN explained that this bill would do two things in Sections 1 and 2 addressing constitutional problems.

Vote: Motion that **HB 349 BE TABLED** carried 17-1 with **REP. NEWMAN** voting no. (roll call vote)

{Tape: 3; Side: A; Approx. Time Counter: 118 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 19}

EXECUTIVE ACTION ON HB 453

Motion: **REP. RASER** moved that **HB 453 DO PASS.**

Discussion:

REP. NOENNIG asked the question about the order of priority of who will get paid. **REP. RICE** also asked if the inmate was married, would the spouse be liable for the debts incurred.

Vote: Motion that **HB 453 DO PASS** carried unanimously.
(voice vote)

{Tape: 3; Side: A; Approx. Time Counter: 19 - 161}

EXECUTIVE ACTION ON HB 358

Motion: **REP. LANGE** moved that **HB 358 DO PASS.**

Motion: **REP. NOENNIG** moved that **HB 358 BE AMENDED.**

Discussion:

Mr. MacMaster explained the amendments by referring to Page 4, Lines 7-11; Page 5, Lines 10-13; Page 6, Lines 6-13; Page 6, Lines 11-14. **REPS. RICE, NOENNIG, SALES, LANGE** and **STOKER** discussed the issue of whether a judge needs to be an attorney prior to being appointed a judge.

Motion: REP. SALES moved that HB 358 HAVE A SUBSTITUTE AMENDMENT.

Discussion:

REP. SALES stated this amendment was to refer to the issue of a judge being an attorney prior to being appointed a judge.

Vote: Motion that HB 358 BE AMENDED carried 16-2 with REPS. HARRIS and NOENNIG voting no. (voice vote)

After the Committee discussed and voted on the Amendments, it was determined that the Executive Action would not proceed further without a current Fiscal Note.

{Tape: 3; Side: A; Approx. Time Counter: 161 - 445}

ADJOURNMENT

Adjournment: 11:23 A.M.

REP. JIM SHOCKLEY, Chairman

PAMELA SCHINDLER, Secretary

JS/PS

EXHIBIT (juh30aad)